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# Legislative Notice

Editor, Judy Gorman Prinkey

No. 58

March 24, 1998

## **S. J. Res. 42 — Disapproving the President's Certification Under Section 490(b) of the Foreign Assistance Act ("Mexican Drug Decertification")**

S. J. Res. 42 was introduced on March 3, 1998, by Senators Coverdell, Feinstein, Hutchinson and Helms, and was referred to the Committee on Foreign Relations. Under the provisions of section 601(b) of the International Security and Arms Export Control Act of 1976, since the committee did not report the resolution within 10 calendar days, it now is in order to move to discharge the committee from further consideration.

### **NOTEWORTHY**

- Floor consideration of S. J. Res. 42 is expected this week. By law, a resolution of disapproval of the President's certification must be enacted within 30 days of the President's certification; in this case the deadline is March 28.
- Pursuant to section 601(b) of the International Security and Arms Export Control Act of 1976, S. J. Res 42 is subject to expedited procedure on the Senate floor. A motion to discharge is privileged, is not amendable, and limited to one hour of debate equally divided. Once discharged, a motion to proceed to consideration of the resolution is also not debatable or amendable. Floor consideration of the resolution is limited to 10 hours, equally divided, with no amendments or motion to recommit in order.
- S. J. Res. 42 is a resolution disapproving President Clinton's certification of February 26, 1998, that Mexico "cooperated fully" with U.S. efforts to combat international narcotics trafficking during 1997. If enacted, it would require the United States to withhold from Mexico U.S. bilateral assistance as well as to oppose assistance to Mexico from multilateral institutions such as the World Bank; S. J. Res. 42 (unlike S. J. Res. 43; see below) includes no presidential waiver provision [see Bill Provisions, page 5].
- S. J. Res. 43, introduced by the same sponsors, is identical to S. J. Res. 42, except that it includes a waiver provision that would permit the President to continue both bilateral assistance and multilateral development assistance upon the President's certification that the "vital national interests of the United States" require it. S. J. Res. 43, unlike S. J. Res. 42, is not subject to privileged procedures.

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## BACKGROUND

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***NOTE: This section is a summary of a longer report by Majority staff of the Committee on Foreign Relations on "decertification" of Mexican drug cooperation. The full report, with notes, charts, and appendices, is available from the Committee.***

Under the Foreign Assistance Act of 1961 (the Act), the President annually must identify and notify the Congress of those countries he has determined are major illicit drug producing and/or drug transit countries. President Clinton identified the present list of 30 major illicit drug producing and/or transit countries and dependent territories and notified the Congress in November 1997.

By March 1 of each year, the President must determine whether to certify that each of these countries is cooperating fully with the United States, or has taken adequate steps on its own, to achieve the counternarcotics goals and objectives of the 1988 UN Drug Convention. In reaching these determinations, the President must consider efforts taken by these states to stop the cultivation and export of, and reduce the domestic demand for, illegal drugs. The President is required to examine each country's performance in areas such as stemming illicit cultivation and production, extraditing drug traffickers, and taking legal steps and law enforcement measures to prevent and punish public corruption that facilitates drug trafficking or impedes prosecution of drug-related crimes.

On February 26, President Clinton certified that 22 countries and dependent territories cooperated fully with the United States in 1997 or took adequate steps on their own to meet the international counternarcotics performance standards of the law. The countries are: Aruba, The Bahamas, Belize, Bolivia, Brazil, China, Dominican Republic, Ecuador, Guatemala, Haiti, Hong Kong, India, Jamaica, Laos, Malaysia, Mexico, Panama, Peru, Taiwan, Thailand, Venezuela, and Vietnam.

The Act also provides the President with the authority to certify that the vital national interests of the United States require that a country continue to receive U.S. bilateral assistance even though the country does not meet the criteria for "certification." The President granted vital national interests waiver to four countries: Cambodia, Colombia, Pakistan, and Paraguay. The President denied certification to four countries that do not meet the statutory standards for certification: Afghanistan, Burma, Iran, and Nigeria. Decertification imposes substantial restrictions on most types of U.S. assistance to such countries.

Under section 490(d) of the Act, Congress can reject the President's determination if, within 30 days of the Congress' receipt of the President's certification, a joint resolution of disapproval *is enacted*; to be enacted, S. J. Res. 42 would have to be approved by a majority of both houses of Congress, and would require the President's *approval* of the joint resolution or (more likely) an override of his veto of such joint resolution.

## ***Profile of Major Mexican Drug Cartels***

According to the Department of Justice and the DEA, Mexico has failed to take serious action against the three major cartels that dominate the drug trade in that country. Drug profits and complicated, compartmentalized distribution networks often foster the development of powerful criminal conglomerates. Cartels are not monolithic entities, but illicit associations in which each group manages a part of the operation and/or rents and sells services to other groups. The three major cartels are:

- The **Juarez Cartel**, considered the most powerful cartel, operates primarily in central Mexico, near Juarez-El Paso and the west Texas and New Mexico borders. This operation reportedly sends Colombian suppliers \$20-30 million in profits for each shipment and generates tens of millions of dollars in profits per week for itself.
- The **Tijuana (or Arellano-Felix) Cartel**, the second most powerful, operates on the west coast near the California-Baja California border.
- The **Sonora (or Caro Quintero) Cartel** is comprised of remnants of the old Guadalajara Cartel, well known for the brutal torture and murder of DEA agent Enrique Camarena. The Sonora cartel operates in northern central Mexico, with main trafficking routes through the Arizona border.

## ***Mexican Cartel Activities in the United States***

DEA Administrator Thomas A. Constantine testified before the Senate Foreign Relations Committee in February 1998 that: "About half of the cocaine entering the United States continues to come from Colombia through Mexico and across the U.S. border points of entry. . . . There is new evidence that indicates traffickers in Mexico have gone directly to sources of cocaine in Bolivia and Peru in order to circumvent Colombian middlemen. . . . Trafficking organizations from Mexico are responsible for producing and trafficking thousands of pounds of methamphetamines. They have been major distributors of heroin and marijuana in the U.S. since the 1970's."

According to the DEA, Mexican nationals control 80 to 90 percent of the methamphetamine trade. They have cornered the market by terrorizing the motorcycle gangs that are the traditional "meth" producers/distributors and by exploiting the lack of control in Mexico of the important precursor ephedrine. Border Patrol officials assert that the vast majority of alien smugglers (known as "coyotes") and many of the aliens themselves also engage in trafficking cocaine, marijuana, and heroin. In addition, officials of the San Diego Violent Crimes Task Force cite the symbiotic relationship between Southern California street gangs and Mexico's Tijuana cartel. The Task Force has brought 20 drug indictments against San Diego gang members.

## ***Mexican Prosecution of Drug Kingpins***

According to U.S. law enforcement officials, there has been no substantial progress by the Government of Mexico in development of prosecutable investigations against the leaders of the major narcotrafficking groups, even when these individuals have been identified by U.S.

investigations and indicted by U.S. prosecutors. Not one of the major drug trafficking groups in Mexico has been dismantled.

### ***Mexican Interdiction of Illicit Narcotics***

The State Department asserts in its March 1998 report to Congress that, "Drug seizures and related indicators of the extent of [the Mexican government's] effort against drugs generally increased over 1996 figures."

*This statement is not supported by the facts.* Mexico's 1997 seizures of heroin, marijuana, and methamphetamine are at or well below 1996 levels. Although 1997 cocaine seizures are up from 1996 — to 34.9 metric tons (MT) from 23.8 MT — they are well below the 50 MT seized in 1991. Despite the *growing* role of Mexican traffickers in methamphetamine production in the past several years, Mexico's seizure of this product has *dropped significantly* to one-fifth 1996 levels and one-tenth 1995 levels. Mexico's drug-related arrests are also down from last year and are less than one-half the 1992 levels.

The U.S. Customs Service conducts routine air interdiction flights over Mexico as well as training flights for Mexican pilots. It should be noted that on September 1, 1997, the office of Mexico's Attorney General arrested 18 personnel from its own aviation division for allegedly smuggling illicit drugs in official aircraft. According to U.S. and Mexican officials, many of these personnel were trained by the U.S. Customs Service.

U.S. law enforcement officers have noted that thousands of sealed cargo containers from South America (including from the Amazon port of Manaus, Brazil) are off-loaded at Mexico's deep water ports on the Gulf Coast. According to these officials, most if not all of these containers pass uninspected through Mexican territory, bound to the United States aboard rail or tractor trailer.

### ***Extradition of Drug Criminals to the United States***

No Mexican national has been extradited *and surrendered* to U.S. custody on drug charges throughout 1997 and thus far in 1998. In fact, no Mexican has been surrendered to U.S. custody *on any crime* since April 1996. According to the Justice Department, the U.S. government has approximately 120 active provisional arrest and extradition requests pending in Mexico. A total of 23 fugitives for whom extradition was sought by the United States were surrendered in 1997, eight for drug-related offenses; all were U.S. citizens or non-Mexicans. Mexico has approved five Mexican drug fugitives for extradition to the United States but all are appealing the extradition decision and remain in Mexican custody.

### ***Recent Allegations of Mexican Corruption***

A senior official of the Department of Justice, Criminal Division, conceded in Congressional testimony subsequent to President Clinton's February 1998 certification of Mexico that "effective cooperation with Mexico was frequently undermined by pervasive corruption within the Mexican law enforcement community" and that "corruption remains widespread and disabling within all Mexican government institutions, including the criminal justice system."

Drug corruption is so widespread that it has touched members of President Ernesto Zedillo's own family. Very recently, Mexican law enforcement officials arrested Juan Alberto Zepeda Novelo, a senior executive of one of the country's largest construction firms, Bufete Industrial, on suspicion of money laundering. Zepeda's son and an associate allegedly approached President Zedillo's brother Rodolfo with a proposal to finance construction of a Mexico City hotel. Rodolfo Zedillo, an architect, has asserted that he refused the deal. ["President's Brother Denies Making Cartel Deal," *Washington Post*, 3/21/98.]

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## BILL PROVISIONS

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### S. J. Res. 42

The full text of S. J. Res. 42 reads as follows:

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That pursuant to subsection (d) of section 490 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291j), Congress disapproves the determination of the President with respect to Mexico for fiscal year 1998 that is contained in the certification (transmittal no. 98-15) submitted to Congress by the President under subsection (b) of that section on February 26, 1998.*

This is a simple disapproval of President Clinton's certification. If S.J.Res. 42 were enacted, pursuant to section 490 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291j), the President would be obliged (1) to withhold 50 percent of United States bilateral assistance to Mexico and (2) to instruct the U.S. director of each multilateral development bank (e.g., the World Bank, the International Development Bank, the Inter-American Development Bank, etc.) to vote against loans for Mexico. Of the two sanctions, the second regarding multilateral institutions is considered to have a more serious potential negative impact on Mexico.

### S. J. Res. 43

This resolution is the same as S. J. Re. 42, except that it includes a waiver provision that would permit the President to continue both bilateral assistance and multilateral development assistance. The waiver would allow both forms of aid to continue during fiscal year 1998 upon the President's certification that the "vital national interests of the United States" require that the aid prohibition not apply to Mexico during this fiscal year.

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## **ADMINISTRATION POSITION**

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No Statement of Administration Policy had been received by press time, but the Clinton Administration is known to be strongly opposed to both S. J. Res. 42 and S. J. Res. 43.

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## **COST**

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No cost information for S. J. Res. 42 or S. J. Res. 43 was available at press time.

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## **POSSIBLE AMENDMENTS**

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By law, no amendments to S. J. Res. 42 are in order.

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